

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER PORTA, and	:	
PATRICIA PORTA,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	NO. 98-2094
	:	
SGT. RICHARD FEE,	:	
THOMAS J. COSTELLO,	:	
THE PHILADELPHIA PRISON SYSTEM, and:	:	
THE CITY OF PHILADELPHIA	:	
Defendants	:	
	:	

MEMORANDUM

R.F. KELLY, J.

JUNE 24,1998

This action is one of three filed by Plaintiffs Patricia and Christopher Porta seeking redress for alleged damages suffered by Porta while employed as a Correctional Officer by the City of Philadelphia.¹ Presently before the Court is the Defendants' Motion to Dismiss. In response to Defendants' Motion, Plaintiffs have withdrawn several Counts of the Complaint.² Of Plaintiffs remaining allegations, Count I alleging defamation must also be dismissed, therefore Defendants' Motion is granted in part and denied in part.

I. FACTS.

On October 15, 1991, the Philadelphia Prison System

¹ See also, Porta v. Brown, No. 98-2093 and Porta v. Dukes, No. 98-2721.

² Specifically, Plaintiffs have withdrawn Count II (42 U.S.C. § 2000e et seq.), Count IV (43 Pa.C.S.A. § 951 et seq.), and Counts III (42 U.S.C. § 1983), V (intentional infliction of emotional distress) and VI (loss of consortium) as brought against the Philadelphia Prison System and the individual Defendants in their official capacities.

hired Plaintiff, Patricia Porta ("Porta"), to work as a Correctional Officer. On December 5 and 6, 1996, Porta and approximately nine other Correctional Officers attended an in-service computer training class taught by Defendant Sgt. Richard Fee ("Fee"). During those classes, Porta alleges that Fee made several discriminatory and defamatory remarks to her. Specifically, Porta alleges that Fee defamed her by stating, "Once you put an entry into the computer like C/O Porta is a slut you can't take it out. So don't put anything like that into the computer." Pls.' Resp. to Defs.' Mot. to Dismiss at 6.

As a result of this statement, Porta included Count I for defamation in the instant complaint. Defendants seek to dismiss Count I, pursuant to Rule 12(b)(6), as barred by the statute of limitations.

II. STANDARD.

Under Rule 12(b)(6), the Court must determine whether the allegations contained in the complaint, construed in the light most favorable to Plaintiff, show a set of circumstances which, if true, would entitle Plaintiff to the relief he requests. Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). A complaint will be dismissed only if Plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). If it clearly appears that a claim has been brought beyond the applicable statute of limitations, then that claim may be dismissed pursuant

to Rule 12(b)(6). Bethel v. Jendoco Constr. Co., 570 F.2d 1168, 1174 (3d Cir. 1978).

III. DISCUSSION.

There is a one year statute of limitations for defamation actions in Pennsylvania. 42 Pa.C.S.A. § 5523(1). Porta alleges that Fee defamed her on December 6, 1996. This action was brought on December 8, 1997, two days after the statute of limitations expired.

Plaintiffs incorrectly assert that the "continuing violation theory" tolls the statute of limitations for defamation. To the contrary, the "continuing violation theory" applies to claims brought pursuant to Title VII. 42 U.S.C. 2000e et seq.; West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). The "continuing violation theory" can not toll the statute of limitations for Plaintiffs defamation claim. Because Porta's defamation claim was brought two days after the statute of limitations expired, Count I of the complaint must be dismissed.

An Order follows.

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SGT. RICHARD FEE,	:	
THOMAS J. COSTELLO,	:	
THE PHILADELPHIA PRISON SYSTEM, and:	:	
THE CITY OF PHILADELPHIA	:	
Defendants	:	
	:	

ORDER

AND NOW, this 24th day of June, 1998, upon consideration of Defendants' Motion to Dismiss, and Plaintiffs' Response thereto, to is hereby ORDERED that:

1. the Motion is GRANTED in part and DENIED in part;
2. Counts II and IV of the Complaint are DISMISSED as they are withdrawn by the Plaintiffs;
3. claims against the individual Defendants in their official capacities are DISMISSED in Counts III, V, and VI as they are withdrawn by the Plaintiffs;
4. all claims against Defendant Philadelphia Prison System are DISMISSED as they are withdrawn by the Plaintiffs;
5. Count I of the Complaint is DISMISSED;
6. as to all other claims, Defendants' Motion is DENIED.

BY THE COURT:

Robert F. Kelly, J.